

**COUNTY <<RESOLUTION/ORDINANCE>> ADOPTING
INTERLOCAL TERMS AND CONDITIONS RULE
TO TRANSFER DEVELOPMENT RIGHTS**

A <<RESOLUTION/ORDINANCE>> ADOPTING THE WASHINGTON STATE DEPARTMENT OF COMMERCE INTERLOCAL TERMS AND CONDITIONS RULE BY REFERENCE FOR TRANSFERRING DEVELOPMENT RIGHTS FROM COUNTY DESIGNATED SENDING AREAS TO CITY DESIGNATED RECEIVING AREAS CONSISTENT WITH THE REGIONAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM.

WHEREAS, the transfer of development rights (TDR) is one tool available to Washington communities to encourage the preservation of working agricultural and forest land while also promoting higher-density, infill development within incorporated cities, consistent with the Washington State Growth Management Act (GMA), Chapter 36.70A RCW, and as provided in the Regional Transfer of Development Rights Program, Chapter 43.362 RCW; and

WHEREAS, the Washington State Legislature affirmed the regional TDR program in 2009 by directing the Washington State Department of Commerce to establish a regional TDR program in Central Puget Sound;

WHEREAS, to further County goals in County <<insert citations for policies/codes>>, it is important to preserve working agricultural and forest land and land whose conservation meets other state and regionally adopted priorities; and

WHEREAS, RCW 43.362.050 authorizes counties in central Puget Sound to adopt by reference interlocal agreement terms and conditions adopted by the Washington State Department of Commerce in Chapter 365-198 WAC in lieu of an interlocal agreement to transfer development rights from the County to a city in central Puget Sound.

THE <<COUNTY COUNCIL/COUNTY BOARD OF COMMISSIONERS>> OF THE COUNTY OF <<KING/PIERCE/SNOHOMISH/KITSAP>> DOES RESOLVE AS FOLLOWS:

OR

THE <<COUNTY COUNCIL/COUNTY BOARD OF COMMISSIONERS>> OF THE COUNTY OF <<KING/PIERCE/SNOHOMISH/KITSAP>>, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The <<County Council/Board of Commissioners>> supports the transfer of development rights from sending areas designated by the County under its TDR program consistent with the Washington State Growth Management Act (GMA), Chapter 36.70A RCW, and as provided in the Regional Transfer of Development Rights Program, Chapter 43.362 RCW.

Section 2. The County hereby adopts by reference the interlocal terms and conditions as set forth in WAC 365-198-050 and 060 as follows:

(a) The county has adopted policies, regulations and administrative procedures to implement the regional transfer of development rights program, including but not limited to:

(i) Facilitating and promoting the qualification and certification of transferable development rights to eligible property owners for the sale of their transferable development rights from properties in the county's designated sending areas consistent with [RCW 43.362.040](#);

(ii) Establishing procedures to facilitate the sale of transferable development rights or development rights credits; and

(iii) Establishing procedures to require, maintain, and enforce deed restrictions on a sending site from which transferable development rights or development rights credits are purchased in order to prohibit those sites from being developed in violation of deed restrictions.

(b) The county shall notify receiving cities and towns by December 31 of each year the number of available development rights credits remaining in designated sending areas.

(i) If the city or town, in consultation with the transferring county, has identified the sending area or areas from which it has agreed to accept transferable development rights the notification shall indicate the number of credits remaining in that sending area for the respective city or town.

(ii) If the county administers a transfer of development rights bank, annual notification of transactions shall be provided.

(c) Pursuant to WAC 365-198-040(1)(d), the County shall respond within a reasonable time to notification by a city or town that it wishes to consult with the County to ensure development rights credit or credits proposed for development use in a designated receiving area are valid.

(c) The County and city or town shall establish an evaluation and monitoring program based on quantitative and qualitative performance measures developed by the Department of Commerce for monitoring the regional transfer of development rights program under [RCW 43.362.070](#).

(d) The County and city or town shall enter into a dispute resolution process through mediation, with an agreed upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any terms and conditions in this <<resolution/ordinance>>. The parties shall use the mediation process in good faith to attempt to come to agreement early in the process, and prior to any appeals or litigation that they might otherwise be entitled to bring.

(e) The County may repeal the provisions of this <<resolution/ordinance>> upon 90 days' written notice by the County to the cities or towns or by cities and towns to the County if:

(i) The city or town's development regulations allowing the use of development rights credits, or the provisions of the County's development regulations allowing transfer of development rights to cities are held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or

(ii) The County, city or town materially defaults in the performance of the obligations as set forth in this <<resolution/ordinance>>, and fails to cure the default within thirty (30) days' of receipt of written notice from the County, city or town.

(f) A city or town's repeal of the terms and conditions in this <<resolution/ordinance>> shall not affect the use of development rights credits previously certified by the County. Development credits certified by the county prior to repeal by the city or town that have not been used in the city or town's receiving area may be used in the County's or another city or town's designated receiving area.

(g) The County shall indemnify and hold harmless the city or town and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the transferring county, its officers, agents, and employees, or any of them, in performing obligations pursuant to this <<resolution/ordinance>>. In the event that any suit based upon such a claim, action, loss, or damage is brought against the city or town, the transferring county shall defend the same at its sole cost and expense, provided that the city or town retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the city or town and its officers, agents, and employees, or any of them, or jointly against the city or town and county and their respective officers, agents, and employees, or any of them, the county shall satisfy the same.

(h) The County acknowledges that if the claims, actions, suits, liability, loss, costs, expenses and damages referenced in subsection (g) of this section are caused by or result from the concurrent negligence of the city or town, its agents, employees, and/or officers and the county, its agents, employees, and/or officers, the provisions of this <<resolution/ordinance>> shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

Optional terms that a county may adopt by reference to Chapter 365-198 WAC in an ordinance or resolution:

(i) The county shall establish and operate a transfer of development rights bank to purchase, sell, and hold development rights.

(j) The county shall facilitate private transferable development rights transactions between willing sellers and buyers.

<<SIGNATORY PROVISIONS AND DATE>>